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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,219	11/03/2003	Patricia V. Kempton	132006-0002	3089

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CESARI AND MCKENNA, LLP
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BOSTON, MA 02210

EXAMINER

FRANCIS, FAYE

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/700,219

Applicant(s)

KEMPTON, PATRICIA V.

Examiner

Faye Francis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-8 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/26/04.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: proper antecedent basis should be provided in the specification for the teaching that the temperature transferring material configured in the pouch, as recited in claim 2. No new matter should be entered into the application.
2. The use of the trademark BLUE ICE and VELCRO have been noted in this application. It should be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is not clear from the specification how a temperature transferring material as required in claim 2 can be incorporated into the claimed apparatus since it appears from the

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specification that the temperature transferring material and the removable element as recited in claim 1 are the same element therefore, additional structure as claimed in claim 2 can not be determined.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 contains the trademark/trade name BLUE ICE. The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Frye [US 4,694,829].

Frye discloses in Figs 1-2, a hand puppet comprising: the puppet having a body portion [outer member 7], a head portion [Fig 1], a pouch [pocket 18] disposed in the body portion of the puppet, a removable element [container 10 containing the non-toxic liquid 11 or solid particulate material] receivable within the pouch that is capable of

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providing a cold or heat therapy [col 3 lines 43-46] to a body portion of a child as recited in claim 1. Additionally, Frye discloses the head portion is an animal shape [Fig 1] as recited in claim 3, the head portion is a character shape [Fig 1] as recited in claim 4 and the removable element is an ice pack [the liquid within the container 10 is inherently cable of being free zed into ice when it is used as a cold compress] as recited in claims 5-6.

With respect to the limitation "hand puppet", device of Frye is inherently capable of being considered as a hand puppet or used as a hand puppet since for example, an adult can insert his/her hand [some adult's hands are smaller than a child's hand] into the pouch [pocket 18] via the opening 17 in order to manipulate the device while the pouch is contiguous to the palm of the adult's hand. Therefore, the requirement for the hand puppet as broadly as claimed does not distinguish over the prior art.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frye as applied to claims 1-6 above and further in view of Hodges [US 5,507,793].

Frye discloses most of the elements of this claim but for the removable element being an air-activated device.

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Hodges is cited to show desirability, in the relevant art, to use an air activated heating pad [heat transfer unit U], which is inserted within a pouch [pocket 16a] in order to provide heat therapy. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the movable element in the device of Frye to include the air activated heating pad as taught by Hodges in order to maintain, upon exposure to air, an even temperature for approximately ten hours.

11. Claims 1-4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Winkle et al [US 5,584,086], herein after Van Winkle.

Van Winkle discloses in the embodiment of Fig 7, a teddy bear-shaped device having a body portion, a head portion, a pouch [inner cover 16] disposed in the body portion of the device, a removable element [filling 18] receivable within the pouch that is capable of providing a cold or heat therapy [col 5 first paragraph] to a body portion of a child as recited in claim 1. Additionally, Van Winkle discloses the head portion is an animal shape [Fig 7] as recited in claim 3, the head portion is a character shape [Fig 7] as recited in claim 4.

Van Winkle may not disclose a hand puppet. However, Van Winkle discloses in the embodiment of Fig 8, a pad 30 having a pocket 32 to allow insertion of hands. It would have been obvious to modify the teddy bear-shaped device of Van Winkle to include the pocket to allow insertion of adult's hands therein and inherently capable of being manipulated while the pouch is contiguous to the palm of the adult's hand. Therefore, the requirement for the hand puppet as broadly as claimed does not distinguish over the prior art.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Winkle as applied to claims 1-4 and 7 above and further in view of Hodges.

Van Winkle discloses most of the elements of this claim but for the removable element being an activated device.

Hodges is cited to show desirability, in the relevant art, to use an air activated heating pad [heat transfer unit U], which is inserted within a pouch [pocket 16a] in order to provide heat therapy. It would have been obvious to modify the movable element in the device of Van Winkle to include the air activated heating pad as taught by Hodges in order to maintain, upon exposure to air, an even temperature for approximately ten hours.

Conclusion

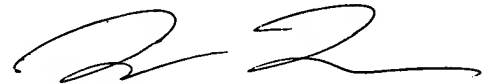
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FF

A handwritten signature in black ink, appearing to read 'Faye Francis', with a stylized, cursive script.

Faye Francis